

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

MICHAELA UNDERWOOD, as the duly appointed
Administratrix of the Estate of James Aaron
McBrayer, Deceased;
SHERRI McBRAYER, Individually and as the
surviving spouse of James Aaron McBrayer,
Deceased, and; SAMUEL AARON McBRAYER,
by and through his mother and natural
guardian Angie McBrayer, and JORDAN JANICE
McBRAYER, the surviving children of James Aaron McBrayer,
Deceased,
Plaintiffs,

v. CIVIL ACTION FILE NO.
7:21-CV-00040-WLS

HON. GENE SCARBROUGH, Individually and in his
official capacity as Sheriff of Tift County,
Georgia, CLIFF HENDERSON, Individually and in
his official capacity as a Lieutenant Deputy
Sheriff of Tift County, Georgia ANTHONY RAYMOND
TRIPP Jr., Individually and in his official
capacity as Deputy Sheriff of Tift County, Georgia,
CONNOR BRENNEN SPURGEON, Individually and in his
official capacity as Deputy Sheriff of Tift County, Georgia,
and AXON ENTERPRISE, INC. of DE, a Delaware Corporation,
Defendants.

The deposition of GENE SCARBROUGH was taken by counsel
for the Plaintiff on February 3, 2022, Hall Booth Smith, 1564
King Road, Tifton, Georgia, commencing at 9:41 a.m. as
follows:

1 APPEARANCES OF COUNSEL:

2 For the Plaintiffs

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6 Tifton, Georgia 31763

7 For the Defendants

8 Hon. Gene Scarbrough, Cliff Henderson,
9 Anthony Raymond Tripp, Jr., and Connor Brennen
10 Spurgeon)

11 Terry E. Williams
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15 For the Defendant

16 AXON Enterprise, Inc. of DE
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20 Also Appearing: Jimmy Mixon, Videographer

21 **ADVANCED COURT REPORTING**

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I N D E X

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Plaintiffs Exhibit 41 - Excerpt of Conner Brennen Spurgeon's deposition	
Plaintiffs Exhibit 42 - Excerpt of Anthony Ray Tripp, Jr.'s deposition	
Defendants Exhibit 4 - Tift County Sheriff's Incident Report	
Defendants Exhibit 9 - TASER Handheld Instructions	

S T I P U L A T I O N S

The deposition is taken by Notice and agreement, pursuant to the Georgia Civil Practice Act and all other applicable laws, for the purposes allowed thereunder, including discovery. All formalities as to the taking, transmitting and certification of said deposition are waived, as is the notice of filing. Objections, except as to the form of the question or the responsiveness of the answer, are hereby reserved and may be asserted at the time of use of the deposition. Is that agreeable to everybody?

MR. WILLIAMS: That's agreeable.

MR. SPURLIN: Does he want to read and sign?

MR. WILLIAMS: Yeah, we will reserve the right.

P R O C E E D I N G S

(Whereupon, the witness was sworn.)

Thereupon,

GENE SCARBROUGH,

Having been called for examination, and having first been duly sworn, was examined and testified as follows:

CROSS EXAMINATION

BY MR. SPURLIN:

Q. Sheriff Scarbrough, my name is Johnny Spurlin, and I need to ask you quite a few questions. But it's not an endurance test. You've done these before. You can take as many breaks as you want. Anytime you say, I want to go to the bathroom, we'll stop.

A. Right.

Q. If I asked you a question that doesn't make sense, if I use a word improperly, if I just ask you a complex, convoluted, poor question you just say, I don't understand. I'll ask it differently. Okay, sir?

A. Okay.

Q. You know to answer out loud and you don't probably say, Uh-huhs and Uh-uhs --

A. Right.

1 Q. -- but those are hard to distinguish later
2 on. So, if you could avoid that. I'm going to cut
3 right to it and not go through a bunch of
4 preliminaries. You are the Sheriff from Tift County,
5 correct?

6 A. Correct.

7 Q. And how long have you been Sheriff?

8 A. Working on my 10th year.

9 Q. And as the Sheriff, are you the top of the
10 chain of command?

11 A. Yes.

12 Q. Okay. And you are the chief policy maker
13 for the Tift County Sheriff's Department?

14 A. Yes.

15 Q. Okay. And like any other business, you have
16 written policies?

17 A. Correct.

18 Q. And then you sometimes have commands that
19 are not in writing, correct?

20 A. Correct.

21 Q. Okay. And you expect the written policies
22 to be followed?

23 A. Correct.

24 Q. And you expect the unwritten commands to be
25 followed?

1 A. Correct.

2 Q. There are practices and procedures that are
3 in place at the Sheriff's Department that are not in
4 writing.

5 A. Correct.

6 Q. And some of that is to obey your shift
7 supervisor.

8 A. Correct.

9 Q. Follow the chain of command.

10 A. Correct.

11 Q. Those are expected to be followed the same
12 as a written policy, correct?

13 A. Correct.

14 Q. And training that you give officers and
15 deputies, do you expect them to follow that training?

16 A. Correct.

17 Q. Okay. Whether it's in writing or verbal,
18 correct?

19 A. Correct.

20 Q. Whether you gave them that command, or
21 someone else gave them that command?

22 A. Correct.

23 Q. Whether they were trained by you or someone
24 in your department.

25 A. Correct.

1 Q. Whether they were trained by you or somebody
2 else in law enforcement?

3 A. Correct.

4 Q. Whatever their training is, they're expected
5 to follow that on a daily basis, correct?

6 A. Correct.

7 Q. Now, I'm going to come back to this multiple
8 times.

9 A. Okay.

10 Q. But, I do want to go ahead and mention it
11 briefly. You expect your deputies to be proficient in
12 their duties, correct?

13 A. Correct.

14 Q. To know what they're supposed to do?

15 A. Correct.

16 Q. To know the policies?

17 A. Correct.

18 Q. To know the procedures?

19 A. Correct.

20 Q. To follow the chain of command?

21 A. Correct.

22 Q. To follow those policies and procedures that
23 are in writing or verbal?

24 A. Correct.

25 Q. To follow their training, whether it's in

1 writing or verbal?

2 A. Correct.

3 Q. And to do it in a proficient manner?

4 A. Correct.

5 Q. Now, when I say proficient, do you have a
6 specific percentage that they're supposed to
7 understand about their policies, procedures, practices
8 and training, and a level that they're supposed to
9 achieve?

10 A. Not that I'm aware of.

11 Q. Okay. But they are, just like taking a test
12 in school, they are supposed to meet some level of
13 proficiency, correct?

14 A. Correct.

15 Q. And that involves number one, understanding
16 the policy, correct?

17 A. Correct.

18 Q. Number two, understanding what the policy
19 means, correct?

20 A. Correct.

21 Q. Okay. Number three, understanding how to
22 apply the policy to a factual situation, correct?

23 A. Correct.

24 Q. Okay. So, you would expect someone going
25 through training to understand the words that they've

1 been given, correct?

2 A. Correct.

3 Q. Understand the meanings of the words they've
4 been given, correct?

5 A. Correct.

6 Q. Understand how to apply those words out in
7 the field?

8 A. Correct.

9 Q. You can't sit by the phone and wait for a
10 deputy to call you every time a decision comes up. Is
11 that correct?

12 A. Correct.

13 Q. He has got to be proficient in knowing how
14 to handle each situation himself, by himself, in the
15 field, correct?

16 A. Correct.

17 Q. And that would involve number one,
18 understanding what your policies are, right?

19 A. Correct.

20 Q. Understanding what your unwritten practices
21 and commands are.

22 A. Right.

23 Q. Understanding what the training requires of
24 him.

25 A. Right.

1 Q. And finally, most importantly probably,
2 applying that to a different factual situation in the
3 field, correct?

4 A. Correct.

5 Q. Okay. So, there are different fact patterns
6 that law enforcement people encounter on a daily
7 basis, correct?

8 A. Correct.

9 Q. Okay. And you served as a state patrol for
10 many years, there were multiple different fact
11 patterns you might encounter, right?

12 A. Yes.

13 Q. For instance, if you stopped a car and were
14 trying to do a search or a seizure, there might be
15 multiple different fact patterns you would encounter
16 over your years, correct?

17 A. Correct.

18 Q. And you have to understand the basis for
19 being allowed to search, right?

20 A. Correct.

21 Q. And what the exceptions are to getting a
22 warrant?

23 A. Yes.

24 Q. And what probable cause is?

25 A. Correct.

1 Q. And how it might change, depending upon the
2 facts?

3 A. Correct.

4 Q. In learning that, do you receive training in
5 hypothetical scenarios?

6 A. I don't understand what you --

7 Q. Yeah. Let me try to help you. I'm going to
8 go back to when you were a state trooper.

9 A. Okay.

10 Q. In the classroom setting, you might be given
11 a fact pattern.

12 A. Right.

13 Q. And you might say, are you allowed to search
14 under these facts?

15 A. Right.

16 Q. Sometimes the answer would be yes, sometimes
17 the answer would be no. Right?

18 A. Right.

19 Q. And you had to understand that as a trooper
20 to know when you had probable cause to search and when
21 you didn't. Right?

22 A. That's correct.

23 Q. And there's consequences if you're wrong.
24 Right?

25 A. Correct.

1 Q. If you were wrong, when you did a search,
2 then the evidence would be thrown out, right?

3 A. Correct.

4 Q. Now I'm going to move to the Sheriff's
5 Department. Okay?

6 A. All right.

7 Q. Is the same true in understanding your
8 policies, practices, procedures and commands, that
9 they have to know how to apply those to different fact
10 patterns?

11 A. Depending on circumstances. Correct.

12 Q. Search and Seizure would be one?

13 A. Absolutely.

14 Q. Another one would be excessive force,
15 correct?

16 A. Correct.

17 Q. Another one would be when you can chase a
18 vehicle, and when you cannot chase a vehicle.

19 A. Correct.

20 Q. Okay. And there are multiple others that we
21 won't go in, but you agree with that?

22 A. Right.

23 Q. They have lots of decisions they have to
24 make, correct?

25 A. Correct.

1 q. And as the chief policy maker for the Tift
2 County Sheriff's Department, it's your responsibility
3 to make sure that they are trained and can apply that
4 in a proficient manner, correct?

5 A. Correct.

6 Q. They cannot, in the field, when making an
7 arrest or obtaining evidence, pick up the phone and
8 call headquarters and go through a 30-minute analysis,
9 can they?

10 A. No, sir.

11 Q. They are required, and you've tried to train
12 them, to make decisions based on different fact
13 patterns, correct?

14 A. Correct.

15 Q. And they are dependent upon themselves to do
16 that in a proficient manner?

17 A. Correct.

18 Q. Okay. All right. In your responsibility as
19 chief policy maker, does the Sheriff's Department
20 provide training to your officers in those areas?

21 A. Yes, sir.

22 Q. Okay. And do you use hypothetical fact
23 patterns when you give them training?

24 A. Sure.

25 Q. Right. That's common among all law

1 enforcement --

2 A. Right.

3 Q. -- that you've been involved, isn't it?

4 A. Right.

5 Q. It was common in the State Patrol.

6 A. Yes.

7 Q. It's common in Sheriff's Department.

8 A. Correct.

9 Q. It's common in the Police Academy.

10 A. Correct.

11 Q. If you go back for higher levels of
12 training, that's a common thing that you use, right?

13 A. Correct.

14 Q. And have you received training yourself in
15 hypothetical fact patterns and how to apply those to
16 policies and procedures?

17 A. Yes.

18 Q. Okay. And do you provide hypothetical fact
19 patterns to your deputies so that they will understand
20 and know how to apply policies and procedures?

21 A. My training people do.

22 Q. That's right. And when I say you, thank you
23 for correcting me --

24 A. Right.

25 Q. -- I'm really talking about department wide.

1 A. Right. Right.

2 Q. You have people that you delegate things to.

3 A. Absolutely.

4 Q. But you are the chief policy maker.

5 A. Correct.

6 Q. And it's your responsibility to make sure
7 they have that training.

8 A. Correct.

9 Q. And make sure they have that understanding.

10 A. Correct.

11 Q. And make sure they're proficient.

12 A. Correct.

13 Q. You just have other people that do the
14 training for you.

15 A. That's right.

16 Q. And you've delegated that authority to them.

17 A. Correct.

18 Q. And expect them to do it correctly.

19 A. Correct.

20 Q. And expect the deputies to become
21 proficient.

22 A. Absolutely.

23 Q. And the trainer to teach them where they are
24 proficient.

25 A. Correct.

1 Q. Okay. And if they are not proficient in an
2 area, they are supposed to recognize it and give them
3 further training, correct?

4 A. Correct.

5 Q. And have you, over the years, done further
6 training when people have not been proficient?

7 A. Correct.

8 Q. Okay. Now, in your experience as the chief
9 policy maker, have y'all ever determined or made a
10 determination that any officer acted inappropriately,
11 in any fact pattern?

12 A. Like, through an investigation of a
13 complaint or something?

14 Q. Yes, sir.

15 A. Yes.

16 Q. Okay. And what is the process if you find
17 that an officer has acted inappropriately or not
18 applied your policies correctly?

19 A. There would be different levels of -- If we
20 found that the officer was guilty of some policy, then
21 there are different levels of punishment.

22 Q. And I appreciate that. Thank you for your
23 answer. Number one, they could commit a crime which
24 would be the worse, right?

25 A. Oh, yeah. Of course.

1 Q. A lesser level would be that they made a
2 mistake and just violated a policy, but they didn't
3 intend to do it.

4 A. Correct.

5 Q. It was just a misunderstanding?

6 A. Right.

7 Q. Not enough education?

8 A. Correct.

9 Q. Lack of experience?

10 A. Correct.

11 Q. And that's why you try to help them along
12 and give them more experience and training, right?

13 A. Correct.

14 Q. And what more training and experience do you
15 get if you find an officer is not applying a policy
16 accurately or properly in the field?

17 A. We would go back and try to find, you know,
18 determine what they, how they violated the policy, and
19 then go from there and give them training they need to
20 correct that issue.

21 Q. Okay. Now, when you find that an officer,
22 I'm just going to use a hypothetical, uses excessive
23 force, is the education and training limited to that
24 officer or do you train the other officers so that
25 they will learn from officer number one's mistake?

1 A. It could be a combination of both?

2 Q. Have there been times when you've used a
3 fact situation that wasn't handled correctly to train
4 other officers, so they don't repeat the mistake?

5 A. Sure.

6 Q. Can you give me some examples?

7 A. Not right off the top of my head, I mean --

8 Q. It's fine. I am going to see if I can help
9 along by posing some --

10 A. Right.

11 Q. -- some possibilities. I know there has
12 been a big deal about chase policies.

13 A. Correct.

14 Q. You would agree with that.

15 A. Right.

16 Q. During your tenure as Sheriff, there have
17 been lots of issues about whether we should or should
18 not have initiated a chase or called one off.

19 A. Correct.

20 Q. There's been litigation about that.

21 A. Correct.

22 Q. On multiple occasions.

23 A. Absolutely.

24 Q. Have you ever, in a chase situation, ever
25 reprimanded an officer for not acting properly?

1 A. I'm sure we have but I can't, you know, --

2 Q. That's fine.

3 A. -- I can't pinpoint one.

4 Q. I'm going to try. The one that I'm most
5 familiar with is the Rutland situation.

6 A. Right.

7 Q. You're familiar with that.

8 A. Right.

9 Q. You were deposed, I'm sure, in that case --

10 A. Right.

11 Q. -- were you not? And there was a difference
12 of opinion among your deputies as to whether a chase
13 should have been initiated or not, correct?

14 A. Correct. Correct.

15 Q. In fact, I believe one of your deputies had
16 called off the chase.

17 A. It was called off and then, then another
18 officer put it, put the chase back into effect.

19 Q. Right. Refresh my memory. I just don't
20 remember the names. Who called off the first chase?

21 A. I believe it was Captain Reese.

22 Q. I believe it was too.

23 A. Lieutenant Colonel Brannen may have been the
24 one that initiated it, or one of, one of the deputies
25 initiated it and, I think, when they lost sight of it,

1 at one point, Captain Reese called it off. And then
2 he was spotted again, later, and they got behind him
3 and continued. And the chase was back on.

4 Q. Let me just see if I remember right. My
5 understanding was, Officer Reese called it off because
6 it was going through a commercial part of town where
7 there were some daycare centers.

8 A. That's correct.

9 Q. Is that true?

10 A. That's correct.

11 Q. And it was a safety question.

12 A. Right.

13 Q. Okay. And then one of your deputies
14 actually drove outside Tift County into Adel and
15 continued looking for him. Is that true?

16 A. Correct. Down Union Road in Lenox.

17 Q. Did he have authority to drive outside Tift
18 County -

19 A. If he was in sight of the --

20 Q. To do that?

21 A. If he was in sight of the vehicle that was
22 in question, he did.

23 Q. But he wasn't in sight of him, was he? And
24 didn't he have to take about a 30-minute drive through
25 Cook County to try to locate him a second time?

1 A. I think --

2 MR. WILLIAMS: I object to you
3 misrepresenting the facts, but I don't see what this
4 has to do with this case. If we're going to get into
5 the facts of that case, that's a long, I handled that
6 case, defense of that case. It's a long set of facts
7 --

8 ATTORNEY SPURLIN: That's fine

9 MR. WILLIAMS: -- and you're completely off
10 base.

11 ATTORNEY SPURLIN: But I am trying to get, I
12 asked the Sheriff a perfectly fair question, and he
13 said I can't remember any. So, I'm trying to get --

14 MR. WILLIAMS: That's fine.

15 ATTORNEY SPURLIN: -- his memory.

16 Q. (By Mr. Spurlin) Isn't that true? Didn't he
17 go looking in Cook County for him when he didn't have
18 sight of him?

19 A. I don't recall. I do recall him picking it,
20 picking it back up in Cook County but the sheriff has
21 statewide authority.

22 Q. Okay.

23 A. Even though I'm out of my county, I can have
24 a still initiate a traffic stop. If, you know, if we
25 have the evidence to support that stop.

1 Q. Sure. So, if you are driving through Cook
2 County and see something, you can initiate a traffic
3 stop.

4 A. Correct.

5 Q. But you can't without plain view or
6 observation of a car, drive into Cook County and just
7 start your own search to see if you find somebody
8 violating a traffic rule, can you?

9 A. Probably not.

10 Q. And the deputy, the deputy when he went into
11 Cook County was not in hot pursuit.

12 A. No.

13 Q. Okay. All right. Was anyone reprimanded
14 for that?

15 A. I'm not sure whether anybody was
16 reprimanded, but we changed our policy on the chase
17 procedures.

18 Q. And I'm trying to get to through this
19 quickly.

20 A. Right.

21 Q. I honestly am. How did you change your
22 policy?

23 A. I don't know that it had anything to do with
24 him going out of Cook, out of Tift County but I don't
25 know if we actually changed the policy or not, but we,

1 we've made, made them aware to not chase anybody in
2 the critical areas, like residential sections or
3 commercial. And the number of vehicles that could
4 chase, be in the chase at any given time. And when to
5 let go --

6 Q. Yes sir.

7 A. -- let another agency take over and stuff
8 like that.

9 Q. I'm going to come back to this because I
10 think it applies to a lot of things. But you agree
11 that you have to balance the benefit of catching a
12 potential criminal against the danger to other people,
13 when you initiate a chase?

14 A. Yes.

15 Q. Same thing, when you decide to use force.
16 You have to balance what crime you're trying to stop a
17 person for, with the amount of force you can use,
18 correct?

19 A. Correct.

20 Q. For instance, if somebody wrote a bad check,
21 you can't use a weapon or deadly force to apprehend
22 somebody for writing a bad check, can you?

23 A. No.

24 Q. But if they've killed somebody or robbed a
25 bank, can you then use the highest level of force?

1 A. Yes, sir.

2 Q. If you're in hot pursuit of somebody who's
3 just shot somebody? Can you, in that instance, use
4 deadly force?

5 A. Yes.

6 Q. Can you, if somebody simply runs a stop
7 sign?

8 A. No.

9 Q. Okay. It's a balancing, is it not, Sheriff?

10 A. Correct.

11 Q. And you agree with that.

12 A. Correct.

13 Q. Okay. And that balancing is something that
14 has to be done by the deputies in the field, correct?

15 A. Correct.

16 Q. And it's got to be done by them properly,
17 based on standards provided by you as the Sheriff,
18 correct?

19 A. Correct.

20 Q. You can't leave it to their total
21 discretion, to make up their own mind and be a cowboy.
22 You have to give them the rules and the standards,
23 correct?

24 MR. WILLIAMS: Object to form. Go ahead.

25 A. Correct. Depending on the circumstances.

1 Q. And the policies and the practices we talk
2 about that are not written and the training is how you
3 give them the standards to use, right?

4 A. Correct.

5 Q. And in order for them to apply it to the
6 facts properly, they have to know the standards.

7 A. Correct.

8 Q. Understand the standards.

9 A. Correct.

10 Q. And know how to apply them to different fact
11 patterns.

12 A. Correct.

13 Q. Okay. And it's the responsibility, as you
14 as the chief policy maker, to make sure that they do
15 that in a proficient manner.

16 A. Correct.

17 Q. Okay. And if you determine that your
18 department misunderstands something, or is not
19 applying it properly, the buck stops with you.

20 A. Correct.

21 Q. And you've got to make sure that they get
22 the training they need to understand and then apply
23 those to a different fact pattern.

24 A. Correct.

25 Q. Gotcha. Thank you, sir. Have you ever had

1 any, we talked about chases, have you ever had any
2 situations where officers have been found to use
3 excessive force?

4 A. Not in, not during my tenure.

5 Q. Never?

6 A. Never.

7 Q. Now, I'm going to ask you for a different
8 hierarchy.

9 A. Okay.

10 Q. Certainly, you could perceive a situation
11 where you found that an officer intentionally used
12 excessive force.

13 A. Correct.

14 Q. That'd be about as bad as you and I can
15 imagine. Right?

16 A. Correct.

17 Q. Then there might be situations that are less
18 than that, where they might have gone over the line on
19 force, but it wasn't intentional. They just made a
20 mistake or had poor training.

21 A. Correct.

22 Q. Have you ever had the second level? Where
23 they may have misunderstood or misapplied your
24 policies and practices and needed more training?

25 A. Not that I'm aware of, after the case or the

1 situation being investigated.

2 Q. Okay. Can you remember any investigations
3 about potential excessive force by any of your
4 deputies in your ten years?

5 A. No.

6 Q. Never been an issue before this case?

7 A. Not that I'm aware of.

8 Q. Okay. Has there ever been any other issue
9 with Deputy Tripp involving his performance as an
10 officer?

11 A. Prior to this?

12 Q. Ever. Before, after, now.

13 A. He was involved in a pedestrian accident in
14 Cook County.

15 Q. Okay. Tell me what happened because I don't
16 think I've been made aware of that.

17 A. He had gone, he was answering a call to an
18 accident, and he got off at, he went into Cook County.
19 And got, actually, actually south of Eldorado but
20 before he got to Cook County. But he talked to the
21 driver of the truck. And there were actually two
22 accidents but the first, the first driver, the guy
23 had, it was hit and run. So, he went on and he didn't
24 realize that another truck had been involved in an
25 accident at the exit ramp in, south bound exit ramp in

1 Lenox, so he got off and crossed the interstate,
2 headed back north and the guy run out in front of him,
3 and Deputy Tripp hit him.

4 Q. Okay. He was on I-75.

5 A. Yes, sir.

6 Q. In Cook County.

7 A. In Cook County.

8 Q. All right. Is he allowed to patrol in Cook
9 County?

10 A. He wasn't patrolling. No. Well, no, no.

11 Q. I understand.

12 A. Not unless he is in pursuit of --

13 Q. Right. If his patrol area is limited to
14 Tift County.

15 A. Tift County, yes sir.

16 Q. But then an exception to that as if he sees
17 a crime being committed, he can then pursue it into
18 Cook county.

19 A. Correct.

20 Q. In this case, the incident that he was
21 investigating, the accident, which county did it occur
22 in?

23 A. It was in Tift County but once it became a
24 hit, he realized it was a hit and run, he had to go to
25 -- we don't have a turnaround at the county line. He

1 had to go all the way to Lenox to the first exit in,
2 after he left Tift County to turn around and come back
3 into Tift County.

4 Q. I understand.

5 A. And that's when that happened.

6 Q. And this was a pedestrian incident?

7 A. Yes sir. Yes sir.

8 Q. Okay. And was he going at high speed?

9 A. No.

10 Q. Okay.

11 A. He was entering, going down the ramp headed
12 back north.

13 Q. Okay.

14 A. I think it was 50 something miles an hour.

15 Q. And somebody was on the ramp in front of
16 him?

17 A. Well, actually, it was the pedestrian that,
18 that was involved in the two hit and runs, that run
19 across.

20 Q. Okay. Was it the driver?

21 A. The driver. He had abandoned the car.

22 Q. Okay. And was there any investigation of
23 his performance?

24 A. Yes.

25 Q. Okay. And who did the investigation?

1 A. I don't know if, I think, GBI may have. I
2 can't remember.

3 Q. Do y'all sometimes, in those situations,
4 refer those investigations to outside --

5 A. Sure. I don't investigate my own people.

6 Q. Thank you. And, and is there ever a
7 situation where you do investigate your own people?

8 A. On minor issues, policy issues.

9 Q. And I would assume that it depends on the
10 degree of the issue.

11 A. Correct.

12 Q. Would that be accurate?

13 A. Correct.

14 Q. If there's a potential crime, you surely
15 refer that to the GBI.

16 A. Absolutely.

17 Q. But if it's just to try to make our people
18 better, to understand policies and practices, do y'all
19 sometimes do an evaluation yourself?

20 A. Correct.

21 q. Okay. And did, were there any findings in
22 this case that Deputy Tripp did anything improper?

23 A. I don't guess it was improper. But, I mean,
24 we're allowed to use our phones, but he was, I think
25 it was determined that he was on the phone when that

1 happened.

2 Q. He was talking on --

3 A. Talking or texting. Talking, I guess.

4 Q. -- on a phone when he hit the guy.

5 A. That was determined later. Yes, sir.

6 Q. Okay. Do you remember if he was on the
7 phone talking or texting?

8 A. I don't know. I don't remember.

9 Q. Who made that determination? Was it your
10 office or the GBI?

11 A. No, it was actually the attorney's
12 investigator from, for the family of the deceased.

13 Q. Okay. The hit and run fellow was killed?

14 A. Yes, sir.

15 Q. Was that lawsuit settled?

16 A. It is still litigating.

17 Q. Okay. And do you know who the lawyers are?

18 A. King.

19 Q. In Tifton?

20 A. Yeah.

21 Q. J. L. King.

22 A. Yeah.

23 Q. Okay. And who is defending the Sheriff's
24 Department in that suit?

25 A. Raleigh Rollins with --

1 Q. I know Mr. Rollins. He's a good lawyer.

2 A. Yes, sir.

3 Q. And a good fella. When did that happen,
4 roughly?

5 A. Sometime in '21. I can't remember.

6 Q. And I'm assuming there would be some phone
7 record to confirm he was on the phone.

8 A. I don't know if that was determined or not.

9 Q. Okay. In your mind --

10 A. It was a reflection through the window that,
11 and I missed it when I saw the video.

12 Q. I got you. Having re-examined the video you
13 can clearly see he had his phone up to his mouth.

14 A. Correct.

15 Q. Okay. No dispute as far as the
16 investigation goes, in your mind. He was on the phone
17 when --

18 A. Correct.

19 Q. Okay. All right. Any other incidents with
20 Mr. Tripp?

21 A. No, sir.

22 Q. Any other discipline he's ever received?

23 A. No, sir.

24 Q. What about Deputy Spurgeon?

25 A. I am not aware of any.

1 Q. Okay. Had there ever been any incidents
2 where you as the chief policy maker have determined
3 that either of those two gentlemen needed any further
4 training, or assistance in understanding and applying
5 your policies, practices and commands?

6 A. No, sir.

7 Q. Okay. You mentioned, maybe while we were
8 chatting before we started, that there's lots of
9 differences in being a Sheriff and being a State
10 Patrol. Is that true?

11 A. That is correct.

12 Q. Are there a lot of similarities as well,
13 though, in law enforcement, with the State Patrol as
14 the Sheriff.

15 A. There's some but the main thing I was
16 referring to was politics.

17 Q. I understand. I understand. As the
18 Sheriff, you've got to listen to people and go to
19 funerals and do some of that kind of stuff, too.
20 Don't you.

21 A. Instead of having two or three bosses, I got
22 43,000 bosses.

23 Q. I understand. Okay. I'm going to ask you
24 some, you can talk as long as you want, some real
25 quick ones, I think. Is it the policy of Tift County

1 that persons detained by Tift County Sheriff's
2 Deputies will be free from the use of excessive force?

3 A. Yes.

4 Q. And it's clearly established among your
5 department that they must make sure not to use
6 excessive force when they detain someone.

7 A. Correct.

8 Q. There's no dispute about that. That's a
9 simple issue, is it not?

10 A. Correct.

11 Q. Okay. And is it also your policy that
12 anyone should be free from excessive use of taser
13 applications?

14 A. Correct.

15 Q. And that's clearly established in your
16 department?

17 A. Correct.

18 Q. Okay. And is it your policy as the Sheriff
19 that persons will receive the least amount of force
20 needed to do the job?

21 A. Correct.

22 Q. And that's clearly established in your, in
23 your area at the Sheriff's Department, correct?

24 A. Correct.

25 Q. Okay. And we kind of touched on that

1 earlier. You cannot use the higher levels of force
2 for very, very minor crimes and misdemeanors, correct?

3 A. Correct.

4 Q. Okay. And that's the way you've trained
5 your deputies.

6 A. Correct.

7 Q. That's been the way the chain of command has
8 passed that down.

9 A. Correct.

10 Q. And that's clearly established among your
11 group of deputies that they can't do that. Right?

12 A. Correct.

13 Q. Same thing, it's your policy that no one
14 should use force simply to inflict pain, correct?

15 A. Correct.

16 Q. And that's clearly established among your
17 department and the sheriff's deputies, correct?

18 A. Correct.

19 Q. Okay. And it's your policy in your
20 department that they must balance the amount of force
21 needed with the government interest in apprehending
22 someone for whatever particular crime they've been
23 charged with, right?

24 A. Correct.

25 Q. And that's clearly established as well,

1 correct?

2 A. Correct.

3 Q. Now, I know from Mr. Webster's deposition of
4 you earlier, that you really have never used a taser.
5 Is that correct?

6 A. Never.

7 Q. Have you ever had any training on the use of
8 the tasers?

9 A. No, sir.

10 Q. Have you as the chief policy maker made it a
11 policy of your department that we will use taser
12 weapons?

13 A. Correct.

14 Q. And you do understand that taser weapons are
15 potentially deadly?

16 A. And, yeah, potentially yes.

17 Q. I'm not saying every time.

18 A. Right.

19 Q. But it can cause death, correct?

20 A. Correct.

21 Q. And it's a potentially dangerous weapon.

22 MS. NYUGEN: Object to form.

23 A. I'm not, I think TASER puts a disclaimer on
24 their product as being a possibility. But you know, I
25 mean, that's as much as I know about it.

1 Q. I understand. And you've delegated to your
2 subordinates, the training and the creation of
3 training materials for getting that information down
4 to your deputies in the field.

5 A. The latest possible.

6 Q. Okay. All right. Let's go ahead and talk
7 about that for a moment. Specifically, about the
8 tasers. And I'm not criticizing you.

9 A. Correct.

10 Q. I understand in a big department, you have
11 to delegate.

12 A. Correct.

13 Q. And you do delegate?

14 A. Absolutely.

15 Q. And you would agree that you are not the
16 expert on how to use a taser or when to use a taser.

17 A. That's correct.

18 Q. And you really can't give me any information
19 about how to use it and when you use, can you?

20 A. No. No, I absolutely know nothing about it
21 other than just the generalities.

22 Q. Right. And you've not gone through the
23 training?

24 A. No.

25 Q. You've not taken the course?

1 A. No.

2 Q. Not read the materials?

3 A. No.

4 Q. Not involved yourself in training deputies?

5 A. No, sir.

6 Q. Who does for you?

7 A. Captain Wingate Whitley and Major Danny
8 Torres.

9 Q. Okay. And can you tell me the extent of
10 their training in how to be the experts for the Tift
11 County Sheriff's Department in knowing how to use a
12 taser and when to use a taser?

13 A. I, I am assuming they've been trained
14 through TASER International.

15 q. Yes, sir. And again, I'm not being
16 critical. Tift County Sheriff's Department has not
17 gone and done their own development of materials?

18 A. No.

19 Q. Y'all have not gone and done investigations
20 yourself?

21 A. No.

22 Q. You've not gone and done any scientific
23 studies?

24 A. No.

25 Q. You've not developed your own training

1 slides and materials?

2 A. No, sir.

3 Q. Y'all have utilized TASER Axon's materials,
4 correct?

5 A. Correct.

6 Q. One hundred percent?

7 MS. NYUGEN: Object to form.

8 A. To my knowledge.

9 Q. Adopted it in its entirety?

10 MR. WILLIAMS: Object to form.

11 MS. NGUYEN: Same objection.

12 A. I don't know if adopted, I mean, that's what
13 we use.

14 Q. Right. I mean, y'all decide, as the
15 Sheriff's Department, you as the chief policy maker,
16 what training your officers get, right?

17 A. Correct.

18 Q. And the decision was made, we will use
19 Axon's materials, correct?

20 A. Correct.

21 Q. We will use the materials with Axon's
22 copyright on the bottom, correct?

23 A. Correct.

24 Q. We'll use the warnings provided by Axon?

25 A. Correct.

1 Q. We use the slideshow provided by Axon?

2 A. Correct.

3 Q. We make our deputies sign the forms prepared
4 by Axon?

5 A. Correct.

6 Q. None of that was independently created by
7 the Tift County Sheriff's Department?

8 A. No.

9 Q. None of that was independently created by
10 Captain Whitley or did you say Major Torres?

11 A. Major Danny Torres.

12 Q. Neither one of them did that?

13 A. No.

14 Q. They adopted that from Axon?

15 A. Correct.

16 Q. Who manufactures the taser weapon, correct?

17 A. Correct.

18 Q. All right. And the training that Captain
19 Whitley received, and that Major Torres received came
20 from Axon, correct?

21 MS. NYUGEN: Object to form.

22 A. I'm not sure if it come directly from them,
23 but that's --

24 Q. You wouldn't know?

25 A. I wouldn't know where it came from.

1 Q. But it didn't come independently from anyone
2 in the Sheriff's Department?

3 A. No.

4 Q. The Sheriff's Department itself doesn't have
5 any knowledge or information other than what it
6 obtained from Axon. Is that correct?

7 A. Correct.

8 Q. Didn't go to any other sources like the
9 Sheriffs Association, the National Association or
10 something to obtain information on taser usage?

11 A. No.

12 Q. Everything the Tift County Sheriff's
13 Department knows came from Axon materials, correct?

14 A. As far as I know.

15 Q. Okay. When did y'all first start using
16 tasers?

17 A. It was before I took office, so it has been,
18 been during Sheriff Vowell's tenure.

19 Q. And have you become aware, through a
20 discussion with Captain Whitley or Major Torres or
21 anyone else in your department, of any changes in the
22 Axon training materials that Tift County has adopted?

23 A. They've not made me aware of it.

24 Q. Okay. Would you be aware if y'all chose to
25 deviate from the training materials given by Axon?

1 A. Correct. Yes, sir.

2 Q. And since you don't know about it, it has
3 not happened?

4 A. No.

5 Q. Okay. What I said is true. It has not
6 happened.

7 A. Right.

8 Q. And y'all have not done any investigation to
9 see if y'all agree with every recommendation of Axon
10 or not.

11 A. Not to my knowledge.

12 Q. And you've not done any investigation to see
13 if you should change any of the training materials
14 Axon's given?

15 A. Not to my knowledge.

16 Q. Sheriff, that sounds like you just adopted
17 it 100%. Is that true?

18 MR. WILLIAMS: Object to form.

19 MS. NYUGEN: Object to form. Asked and
20 answered.

21 A. Yes.

22 Q. Okay. You expect them to be the experts on
23 that. Right?

24 A. Correct.

25 Q. Okay. And like lots of things, where we

1 rely on experts and doctors, you've chosen to rely
2 upon and adopt their training materials, right?

3 A. Yeah because that's the product we use.

4 Q. Right. And the policy of the Tift County
5 Sheriff's Department is to follow those training
6 recommendations, correct?

7 A. Correct.

8 Q. To the letter, correct?

9 A. Correct.

10 Q. Without deviation, correct?

11 A. Correct.

12 Q. And no instruction has ever gone to a deputy
13 that you have that they can choose to follow or choose
14 to disregard those training recommendations?

15 A. Correct.

16 Q. Okay. And you're aware of that, because as
17 the chief policy maker, you know that that's what
18 Torres and Whitley are teaching them, right?

19 A. Correct.

20 Q. Okay. And you do agree that they need to
21 know in the field, if they're authorized to use that
22 taser, how to use it safely?

23 A. Correct.

24 Q. And they must know in the field when to use
25 that taser?

1 A. Correct.

2 Q. And they must know in the field when to
3 refrain from using that taser.

4 A Correct.

5 Q. And they must know the circumstances when
6 they are not supposed to use that taser, correct?

7 A. Correct.

8 Q. And they are given that information by the
9 training provided by Tift County Sheriff's Department,
10 right?

11 A. Correct.

12 Q. And that includes hypothetical fact patterns
13 when they know when they can use it and when they
14 can't, right?

15 A. Correct.

16 Q. Okay. And they're expected to follow that
17 training, right?

18 A. Correct.

19 Q. They do not have the authority in the field
20 to disregard that training and do whatever they want?

21 A. Correct.

22 Q. They do not have discretion in the field to
23 do whatever they want?

24 A. Correct.

25 Q. They are expected in the field to act

1 consistently with that training material provided by
2 Axon?

3 A. Correct.

4 Q. And they are expected, by you, to understand
5 that material and become proficient in knowing how to
6 use it in the field?

7 A. Correct.

8 Q. Okay. And that's what you expect Whitley
9 and Torres to pass down through the chain of command
10 to your new deputies, right?

11 A. Correct.

12 Q. And they are not supposed to be issued a
13 taser weapon until they understand and have the
14 proficiency to apply that in the field?

15 A. Correct.

16 Q. Okay. Has there ever been an issue,
17 Sheriff, we've talked about chases, we've talked about
18 force, where y'all have decided that, well we don't
19 really understand this taser enough. Let's get
20 everybody in a shift meeting or at the beginning of a
21 shift and go through this again with them?

22 A. I'm sure there have been updates, but I'm
23 not, I'm not aware of any.

24 Q. Okay.

25 A. But --

1 Q. I'm not sure I asked a good question. Let
2 me try again. I know they have to have a
3 certification, right?

4 A. Right.

5 Q. Before they're issued a taser, they got to
6 go through the course with Torres or Whitley, right?

7 A. Correct.

8 Q. And that's a one-day course?

9 A. Yes, sir.

10 Q. And some of it is classroom?

11 A. Correct.

12 Q. Some of it is training materials from Axon?

13 A. Correct.

14 Q. And then some of it is actual usage of it?

15 A. Correct.

16 Q. Okay. I'm not talking about that.

17 A. Right.

18 Q. And I'm not talking about recertification.

19 I'm just talking about where an issue has come up.

20 So, the shift supervisor having --

21 A. Right.

22 Q. -- been given information by you, or someone
23 else, says let's just talk about it before we send our
24 deputies out. Is there any of that that's ever gone
25 on, to your knowledge?

1 A. Not to my knowledge.

2 Q. Would you know about it? Or is that
3 delegated to somebody?

4 A. That's delegated. I mean, they don't come
5 to me with every --

6 Q. I understand. Help me with the chain of
7 command. I certainly know Larry Taylor.

8 A. Larry's retired now.

9 Q. Right, he was your number one man for a long
10 time.

11 A. He was Chief Deputy.

12 Q. Was he the one to pass that information down
13 to the shift --

14 A. Correct.

15 Q. Okay. And so, he might know.

16 A. Correct.

17 Q. Okay. And you might not be involved in that
18 directly.

19 A. That's correct.

20 Q. Okay. And when Larry retired, who took his
21 spot?

22 A. Colonel Ray Merritt.

23 Q. Okay. Do you know if that has occurred with
24 Colonel Merritt?

25 A. Not to my knowledge.

1 Q. Okay. Has there been any investigation
2 internally, in this situation with this taser, as to
3 whether our officers have been trained and understand
4 how to use the taser and when to use the taser?

5 A. You mean as far as on this case?

6 Q. Yes, sir.

7 A. Not that I'm aware of because we turned it
8 over to GBI and I relied on their investigation.

9 Q. I understand. And that kind of goes back to
10 what I said earlier, where they might do some criminal
11 investigation --

12 A. Correct.

13 Q. -- or something but y'all might just want to
14 make sure that it never happens again.

15 A. Right.

16 Q. We educate our people better. Hasn't been
17 any of that?

18 A. Not, if it was, I was not made aware of it.

19 Q. Okay. Would I understand correctly Sheriff
20 that every deputy who's come through your department
21 has received training by your people directly in how
22 to apply fact patterns to policies and procedures?

23 A. Correct.

24 Q. That's a common training tool is it not?

25 A. Correct.

1 Q. And your understanding of the Police Academy
2 is they would have received the same type training on
3 hypothetical fact situations there?

4 A. Correct.

5 Q. Okay. I know you've answered this question
6 before. Excuse me, I just got to get it on this
7 record. Do you know what excited delirium is?

8 A. I do now but at the time I'd never heard of
9 it.

10 Q. Okay. Were you aware that the term existed
11 and just didn't know the definition? Or had you never
12 heard the two words?

13 A. I just never heard the, heard the
14 definition.

15 Q. And having not gone through the Axon
16 training, you were not aware that was a term used in
17 their training materials?

18 A. Correct.

19 Q. Okay. Do you now understand?

20 MS. NYUGEN: Objection to form.

21 Q. Do you now understand what the term means?

22 A. I guess in layman's terms, it's just
23 elevated heart rate and excitement.

24 Q. Okay. Do you know, as a law enforcement
25 person, how people are trained to recognize that that

1 exists?

2 A. I'm not aware of it because I have not been
3 trained so I'm not aware of it.

4 Q. Yeah. I'm not a law enforcement person.
5 But when you tell me it's elevated heart rate and I
6 see a guy out in the distance, I can't measure his
7 heart rate, right?

8 A. Correct.

9 Q. So, what symptoms or facts am I looking for
10 to identify a potential detainee as being under the
11 influence of excited delirium?

12 A. I don't know.

13 Q. I understand. Do you know if your
14 department has an understanding of how to recognize
15 excited delirium?

16 A. I'm not sure whether they've implemented
17 that or not through our training division.

18 Q. You've not been part of any discussion with
19 anyone in your department about how to train officers
20 on recognizing excited delirium?

21 A. No.

22 Q. You've not been part of any discussion on
23 defining excited delirium for your officers?

24 A. No.

25 Q. And you've not ordered your delegates,

1 Captain Whitley and Major Torres, to train anyone on
2 how to recognize excited delirium?

3 A. No.

4 Q. Since you found out that was part of the
5 Axon materials, have y'all implemented any efforts to
6 train your deputies, on understanding excited delirium
7 and in recognizing excited delirium?

8 A. I've not been made aware of that.

9 Q. Okay. All right. Now my years run
10 together, yours probably do too. That became an issue
11 you became aware of a couple of years ago, did it not?

12 A. In this case.

13 Q. Right. And that's been at least two years
14 ago, right?

15 A. I believe that's correct.

16 Q. And y'all have not initiating any effort to
17 train your deputies in understanding or recognizing it
18 since then.

19 A. We may have but I'm not aware of it.

20 Q. Okay. All right. Are you aware that there
21 are populations of people who should not have a taser
22 weapon used against them?

23 MS. NYUGEN: Object to form.

24 MR. WILLIAMS: Same objection.

25 A. I'm not sure whether that, I'm aware of

1 that, or I do know that when we were using pepper
2 spray, that there was a certain population, percentage
3 of the population it didn't affect.

4 Q. Let me just ask you this. I know you're not
5 the expert in this.

6 A. Right.

7 Q. I'm just generally asking your awareness as
8 the --

9 A. Right.

10 Q. -- chief policy maker. You indicated that
11 there were warnings from Axon that a taser weapon
12 could potentially cause death?

13 A. Correct.

14 Q. And you were aware that it was more likely
15 in people who had heart issues or were mentally ill,
16 or who were under the influence of excited delirium?

17 MR. WILLIAMS: Object to form.

18 A. I'm not aware, I'm not aware of those.

19 Q. Okay. Were you aware of any group of people
20 or population of people that deputies were supposed to
21 be wary of using the taser or prohibited from using
22 the taser on?

23 MS. NYUGEN: Object to form.

24 A. Not to my knowledge.

25 Q. Okay. As we sit here today, is it the

1 policy of the Tift County Sheriff's Department that a
2 deputy can use a taser weapon on any person regardless
3 of their underlying health.

4 A, I don't know if, I don't know our people are
5 qualified to determine their health so I would say
6 yes.

7 Q. Okay. All right.

8 A. It's discretionary.

9 Q. I understand. And the discretion they are
10 supposed to use is based on the training that has been
11 provided to them, right?

12 A. Correct.

13 Q. And the training that has been provided to
14 them is the Axon materials?

15 A. Correct.

16 Q. That you expect them to follow?

17 MS. NYUGEN: Object to form.

18 A. Correct.

19 Q. Okay. I mean, they just can't, you agree a
20 deputy can't just have unfettered discretion with no
21 standards and rules?

22 A. No. I think they have to feel threatened or
23 having to have to make a decision whether to contain a
24 person.

25 Q. I understand. So, you agree with me there

1 are standards and rules they have to apply?

2 A. Correct.

3 Q. They just can't get mad at somebody and
4 shoot them?

5 A. Correct.

6 Q. And the standards and rules they are
7 provided are provided by the Sheriff's Department,
8 right?

9 A. Correct.

10 Q. Y'all choose what to provide them?

11 A. Correct.

12 Q. And expect them to follow that?

13 A. Correct.

14 Q. And y'all choose those rules that they have
15 to apply in the field?

16 A. Correct.

17 Q. And expect them to follow that?

18 A. Correct.

19 Q. It's not unfettered discretion, they just
20 can't do what they want?

21 MR. WILLIAMS: Object to form.

22 A. Correct.

23 Q. They've got to follow the training and
24 standards you provide to them?

25 A. But still, correct, but still they have,

1 they have discretion depending on circumstances.

2 Q. Within the rules, standards and guidance
3 that you've provided?

4 A. Correct.

5 Q. Got you. I'm teasing you. We've talked
6 about probable cause in search and seizure?

7 A. Right.

8 Q. A deputy can't have unfettered discretion to
9 violate the constitution and seize evidence without
10 probable cause, can he?

11 A. Absolutely not.

12 Q. He only has certain discretion within the
13 rules and guidance that's provided?

14 A. Correct, correct.

15 Q. And that ruling guidance in this context of
16 use of a taser has been provided by the Sheriff's
17 Department?

18 A. Correct.

19 Q. And the materials they've been trained with
20 have been the Axon materials?

21 A. Correct.

22 Q. All right. Does it concern you that none of
23 your deputies understood and knew that the excited
24 delirium limitation existed?

25 MR. WILLIAMS: Object to form.

1 MS. NYUGEN: Joined.

2 A. I guess to somewhat but I, I relied on what
3 the GBI investigation, the crime lab and everyone else
4 involved in the case and they all stated that my
5 deputies did nothing wrong. And that's, that's what I
6 have to rely on because I wasn't there.

7 Q. Okay. Well, I'm asking you about before an
8 investigation is done? Does it concern you that your
9 deputies in the field are not proficient on knowing
10 the standards for how to use and when to use a taser
11 weapon?

12 MS. NYUGEN: Object to form.

13 MR. WILLIAMS: Object to form.

14 A. I don't know that they're not.

15 Q. Okay. Well, if they don't understand what
16 the word excited delirium means and don't know how to
17 recognize it, then how can they, in the field, know
18 that I shouldn't use it against a particular person?

19 MR. WILLIAMS: Object to form.

20 MS. NYUGEN: Same objection.

21 A. I don't know if they're capable of
22 determining why they can't use it.

23 Q. Were you aware that the training materials
24 from Axon say you are not supposed to use it on
25 mentally ill persons or should be very wary of using

1 it on mentally ill persons?

2 MS. NYUGEN: Object to form, that is what it
3 says.

4 MR. SPURLIN: Ma'am, all you've got to say
5 is object to form.

6 MS. NYUGEN: No. You're not going to
7 mislead this witness and --

8 MR. SPURLIN: You stood on your head about
9 speaking objections earlier --

10 MS. NYUGEN: -- misrepresenting information
11 constantly.

12 MR. SPURLIN: No, I am not.

13 MS. NYUGEN: Yeah, you are. And you know
14 it.

15 A. What was the question?

16 Q. Are you aware of any limitation on the use
17 of a taser weapon with someone who's mentally ill?

18 A. No.

19 Q. Are you aware of any limitation on using a
20 taser weapon on somebody who's under the influence of
21 drugs?

22 A. No.

23 Q. Are you aware of any limitation on using
24 taser weapons with someone suffering from a heart
25 issue?

1 A. No.

2 Q. Okay. Is it your position as the chief
3 policy maker that your deputies are not medical people
4 and cannot be expected to make those determinations
5 before utilizing the taser weapon?

6 A. Correct.

7 Q. Okay. And you have made no effort as the
8 chief policy maker to educate your deputies on how to
9 determine any of those mental illness, excited
10 delirium, heart issues, drug usage, correct?

11 A. I haven't.

12 Q. Has your department?

13 A. I'm not sure if my training officers have or
14 not.

15 Q. Okay. Have you read any of your deputies'
16 depositions in this case?

17 A. No, sir.

18 Q. Okay. I'm going to paraphrase Deputy
19 Hancock, who seems like a nice young man, said he
20 could not identify any fact pattern for me at all as
21 far as when you should or should not use a taser
22 weapon in the field. But he carries one. Does that
23 concern you that he doesn't have any proficiency in
24 knowing the training, the standards, and when he
25 should use it in the field?

1 MR. WILLIAMS: Object to form. Go ahead.

2 A. My answer to that is if he took the
3 training, he should know.

4 Q. Okay. Would it, would it concern you if
5 Deputy Tripp and Deputy Spurgeon testified similarly?

6 MR. WILLIAMS: Object to form.

7 MS. NYUGEN: Same.

8 A. Same answer.

9 Q. Is it the policy of the Sheriff's Department
10 that an officer in the field has discretion to use an
11 unlimited amount of taser applications?

12 MR. WILLIAMS: Object to form.

13 MS. NYUGEN: Object to form.

14 A. I think depending on the circumstances.

15 Q. Okay. So, there are circumstances where an
16 officer could use the taser weapon fifteen times on a
17 detainee?

18 A. If it shows no effect, but I don't think
19 they would, they would use one that much because it
20 wouldn't take that long to determine that it is not
21 effective.

22 Q. How have you trained your officers in
23 determining whether an application of the taser
24 weapon, quote has any effect on the detainee?

25 A. I'm not aware.

1 Q. Well, you said if it has no effect. How are
2 they supposed to determine if it has an effect?

3 A. If they keep doing what they were doing?

4 Q. Okay.

5 A. As a result of the taser being applied.

6 Q. All right. Now, I understand that a taser
7 can completely incapacitate someone's muscular use, is
8 that your understanding?

9 MS. NYUGEN: Object to form.

10 MR. WILLIAMS: He has already testified he
11 doesn't have any experience with it.

12 MR. SPURLIN: That's a speaking objection.

13 MR. WILLIAMS: Well, my goodness, how many
14 times, you've asked him five or six times and he's
15 confirmed each time he hasn't had training, he's not
16 familiar with it but yet, you keep asking him.

17 MR. SPURLIN: He said he had some knowledge.

18 MR. WILLIAMS: Subject to the objection, you
19 can respond.

20 MR. SPURLIN: For the record I object to the
21 speaking objections that we clearly have gone through
22 before. Object to the form or object to the response,
23 is all that needs to be said. To coach him and tell
24 him to say I don't have any training --

25 MR. WILLIAMS: But wait a minute.

1 MR. SPURLIN: -- when he's already said --

2 MR. WILLIAMS: He's already said it several
3 times, so it certainly not approaches --

4 MR. SPURLIN: But he has the general
5 knowledge.

6 MR. WILLIAMS: What? It's ridiculous.

7 MR. SPURLIN: Then why do you need to say
8 it. Just stop coaching.

9 MR. WILLIAMS: Just to try to move this
10 deposition along. How is that coaching him when he
11 has already said it three or four times?

12 MR. SPURLIN: You tell him to say to this
13 question.

14 MR. WILLIAMS: (Laughs)

15 A. I've witnessed tasers being used.

16 Q. My question is, is it possible that the
17 taser has an effect on a person's body without
18 completely incapacitating them?

19 A. I've been made aware of that.

20 Q. Right. So, I could tase someone five times
21 and they not be completely incapacitated but all five
22 applications have some effect on his body, correct?

23 MS. NYUGEN: Object to form.

24 A. I'm not sure.

25 Q. Okay. Could be affecting his heart rate?

1 MS. NYUGEN: Same objection.

2 A. I'm not sure.

3 Q. Could be affecting his endurance?

4 MS. NYUGEN: Same objection.

5 A. I'm not sure.

6 Q. Could be causing cellular changes in his
7 muscles?

8 A. I'm not sure.

9 Q. But the policy of the Sheriff's Department
10 is he can keep doing that as long as the person is not
11 detained. Is that correct?

12 A. As far as I know.

13 Q. Well, the TASER materials suggest that you
14 shouldn't use it more than three times for a duration
15 of fifteen seconds. Do you have any knowledge of
16 that?

17 MS. NYUGEN: Object to form.

18 MR. WILLIAMS: Object to form.

19 A. I may have read that somewhere but I'm not,
20 I'm not sure where it came from? Or what, it maybe
21 something somebody said. I'm not sure.

22 Q. Have you instructed Captain Whitley and
23 Major Torres to tell your officers to ignore that?

24 A. I've not told my instructors to ignore
25 anything.

1 Q. Okay. Do you know if Captain Whitley or
2 Major Torres have told the deputies they're training
3 to ignore that?

4 A. No.

5 Q. Were you aware that Deputy Spurgeon said
6 using the 6+ six times for thirty seconds was
7 excessive force?

8 MS. NYUGEN: Object to form.

9 MR. WILLIAMS: Object to form.

10 A. I'm not aware.

11 Q. Would it concern you if he testified under
12 oath that he felt that was excessive force?

13 MR. WILLIAMS: Object to form.

14 MS. NYUGEN: Same objection.

15 A. I'm not aware that he said that.

16 Q. Okay. You've never been made aware that he
17 testified in that manner.

18 A. No.

19 Q. Okay. All right. I am going to show you
20 what's marked as Plaintiff's Exhibit number 41. You
21 see the front page of that deposition, Connor Brennan
22 Spurgeon?

23 (Whereupon, Exhibit 41, having previously
24 been marked for identification, was exhibited to the
25 witness.)

1 A. Yes, sir.

2 Q. All right. And it says that was the
3 deposition taken in the case of Sherri McBrayer vs
4 Gene Scarbrough --

5 A. Okay.

6 Q. -- in Tift Superior Court. You were
7 familiar with that suit.

8 A. Correct.

9 Q. All right, then, I want you to turn to page
10 38 and I am going to read it to you and let you just
11 follow along if you don't mind.

12 A. Okay.

13 Q. Line 17 says, if his download showed that he
14 pulled the trigger four different times for four
15 different five second cycles and then you use the
16 drive stun twice for two five second cycles, you don't
17 feel that that's excessive force using the taser gun
18 combined between yours and Officer Tripp's actions.
19 His answer was yes sir. Then the question was yes
20 what and his answer on the next page is, if that is
21 the case, then yes sir, I do. Question you do what.
22 Answer, I believe that would be excessive. Next
23 question. If Officer Tripp used the taser four times
24 and you drive stunned twice, you agree that's
25 excessive force. Is that what you're saying? Answer,

1 yes, sir. Did I read it accurately?

2 A. Yes, sir.

3 Q. Were you aware of that prior to today?

4 A. No, sir.

5 Q. Okay. All right.

6 MS. NYUGEN: Can we take a break when you
7 get a chance?

8 MR. SPURLIN: Yeah, we can take a break now.

9 (Whereupon, after a short break, the
10 deposition continued as follows:)

11 Q. (By Mr. Spurlin) Sheriff are you aware of
12 the Tift County policy about deputies targeting a
13 detainee with an aiming at the chest with taser
14 weapon?

15 A. Yes.

16 Q. And what is the policy?

17 A. Basically, to aim below chest level.

18 Q. And that is what your expectation is for
19 your deputies in the field?

20 A. Whenever, yeah, whenever possible. But I
21 understand there are circumstances that --

22 Q. I understand. Sometimes because of
23 circumstances you shoot where you can?

24 A. Correct.

1 Q. But I'm talking about aiming.

2 A. Right.

3 Q. To intentionally aim at the chest would be a
4 violation of the Tift County policy?

5 A. Intentionally, yes.

6 Q. To intentionally aim for the head would be a
7 violation?

8 A. Correct.

9 Q. To intentionally aimed for the groin would
10 be a violation?

11 A. Correct.

12 Q. Okay. So, if an officer did intentionally
13 target those areas that would violate your policy?

14 A. Absolutely.

15 Q. Okay. I'm going to hand you an excerpt from
16 Tripp's deposition that I marked as Plaintiff's
17 Exhibit 42. And again, I'm going to go through it a
18 little bit. The first page just gives his name and
19 the date of June 10, 2020, when it was taken.

20 (Whereupon, Plaintiff's Exhibit 42, having
21 previously been marked for identification, was
22 exhibited to the witness.)

23 A. Correct.

24 Q. Now I want you to look with me and I'm going
25 to read a little bit. Page 41, line 12.

1 Question: "Did you intend to hit him in the
2 chest? Or was that just kind of how it happened?"

3 Answer: "My intention was, yes, for one of
4 the prongs to go toward the chest area. Ideally, if
5 you tase somebody, you want to tase him from a little
6 bit further distance than I actually did. And the
7 reason for that is it gets more spread on these
8 prongs. That's how a taser works. I'm sure you
9 already know, a taser is shot in between the prongs.
10 It targets the muscle groups between those prongs.
11 So, the more spread you have the better off the more
12 effect you're going to have. So ideally, no.
13 Ideally, you would want one towards the chest area,
14 and maybe one on the stomach area."

15 Did I read it accurately?

16 A. Yes, sir.

17 Q. Now the first sentence said my intention was
18 yes for one of the prongs to go toward the chest area.
19 If that is a true statement from Tripp that would
20 violate your policy.

21 A. If that was his, yeah, true, true.

22 Q. And then he says, ideally, you understand
23 what the word ideally means?

24 A. Correct.

25 Q. In a perfect world if he had a choice, his

1 choice would be one in the chest and one lower in the
2 stomach area. That would violate your policy,
3 correct?

4 A. Correct.

5 Q. That's not an ideal shot?

6 A. No.

7 Q. That's not the way he was trained?

8 A. Correct.

9 Q. That's not the policy of your department?

10 A. Correct.

11 Q. And to intend to aim for the chest, for an
12 ideal shot of one in the chest and one in the abdomen,
13 would violate your policy?

14 A. Correct.

15 Q. And it would be excessive force?

16 MR. WILLIAMS: Object to form.

17 A. Again, based on the circumstances, I don't,
18 you know, timewise and his reaction to an event that
19 the perpetrator was creating, to have his mindset--

20 Q. All right.

21 A. He has discretion.

22 Q. He doesn't have discretion to shoot him in
23 the chest or the groin?

24 A. No, no he doesn't have discretion but he --

25 MR. WILLIAMS: Object to form.

1 MS. NYUGEN: Join.

2 A. -- he has a discretion to use, to use his
3 weapon.

4 Q. I understand. Again, within the parameters
5 of the training materials, policies and procedures,
6 correct?

7 A. Correct.

8 Q. He doesn't have discretion to shoot him in
9 the groin or to shoot him in the chest intentionally?

10 A. Correct.

11 Q. He can't aim for the chest or the groin,
12 correct?

13 A. Correct.

14 Q. He just said his intent and his ideal shot
15 would be in the chest, correct?

16 A. Correct.

17 Q. That is a violation of your policy, is it
18 not?

19 A. According to his statement, yes sir.

20 Q. That would be excessive force, correct?

21 MR. WILLIAMS: Object to form.

22 MS. NYUGEN: Object.

23 A. I guess.

24 Q. Your policy is to give them training so that
25 they use the weapon properly with the right amount of

1 force, correct?

2 A. Correct.

3 Q. Shooting him in an area that's prohibited,
4 intentionally, the chest, the groin or the neck, would
5 be excessive force, would it not?

6 MR. WILLIAMS: Object to form.

7 A. Correct.

8 Q. All right. Let's see. Does the Tift County
9 Sheriff's Department have a policy that anyone tased
10 will receive immediate medical care?

11 A. I'm not sure if that's in policy but we try
12 to make that happen.

13 Q. Let me try it differently. Whether it's in
14 a written policy or an unwritten practice that you of
15 expect officers, has that been passed down that
16 anytime you tase somebody we want them to get
17 medically evaluated?

18 A. I'm not sure.

19 Q. Okay. Is it possible that that's a practice
20 that's been passed down that you wouldn't know about?

21 A. It's possible.

22 Q. Okay. Is there any policy or practice of
23 the Sheriff's Department that anyone who's tased and
24 is unresponsive after 10 minutes will receive
25 immediate medical care?

1 A. I'm not sure.

2 Q. Okay. Do you have any explanation for why
3 the officers, or the deputies decided that they needed
4 to put him in the car?

5 A. I wasn't there but I'm assuming that, for
6 his protection and theirs to hold him until they
7 decided what they were going to do.

8 Q. Okay. Well, at the time the decision was
9 made to put him in a car, was he unresponsive?

10 A. I'm not aware of that.

11 Q. Have you seen the videos?

12 A. I've seen the video but I'm --

13 Q. Okay.

14 A. I don't recall.

15 Q. Was he unconscious?

16 A. Prior to putting him in the car? No, he
17 wasn't, not to my knowledge.

18 Q. Okay. Did you see how they lifted him up
19 and put him in the car?

20 A. I did but I don't recall.

21 Q. Is there any policy, practice or procedure
22 that you passed down for how people are supposed to be
23 put in the car?

24 A. They are, I believe they, we require them to
25 put them, sit them up in a sitting position, if

1 possible. Sometimes that's not possible. Depends on
2 how the defendant's reacting.

3 Q. Would it be fair to say that, like all other
4 force, the deputies are supposed to use the least
5 amount of force available to get him in the car?

6 A. Correct.

7 Q. Okay. And if he's not, not resisting at
8 that point, or he's not responsive, they should use
9 the least force possible to get him in the car without
10 hurting him.

11 A. Correct.

12 Q. Okay. Did you know he was hobble strapped
13 at the point he was picked up?

14 A. I'm not aware.

15 Q. Were you aware he was handcuffed behind his
16 back?

17 A. I think through testimony, he was hobbled
18 and handcuffed.

19 Q. Were you aware that he was lifted up by his
20 handcuffed hands behind his back in a way that pushed
21 his hands and arms into an unnatural position behind
22 him, outside their normal range of motion?

23 MR. WILLIAMS: Object to form.

24 A. I can't remember whether, I saw the video
25 but was early on, I can't remember.

1 Q. I understand. At that point, when he was
2 put in the car, was there any policy, practice,
3 procedure or training that you had given the deputies
4 that he should receive immediate medical care?

5 A. By being placed in the car?

6 Q. No, sir. Thank you. I appreciate the
7 clarification. Based on all the facts that had
8 happened --

9 A. Right.

10 Q. -- based on the way he appeared, the way he
11 was reacting, the way he was tased, the struggle on
12 the ground --

13 MR. WILLIAMS: (Inaudible).

14 Q. Do I need to start over? I'll start over so
15 you can edit it out.

16 Based upon the way he was acting, the way he
17 appeared to the officers, the fact he was tased
18 multiple times, the fact he had a lengthy struggle on
19 the ground with the officers, the fact he was
20 handcuffed, and hobble strapped, and the fact he was
21 unresponsive. Did he need medical care at that point?

22 MR. WILLIAMS: Object to form.

23 A. I recall them checking on him, but I don't
24 recall whether it was before or after he was placed in
25 a car.

1 Q. I understand. My question is, did he need
2 medical care, not for being checked on by a deputy?

3 MR. WILLIAMS: Same objection.

4 A. I'm not, I'm not clear on whether he was
5 showing any signs of, other than, you know, him
6 struggling with the officers, whether he needed
7 attention or not. I mean, like I say, I wasn't there,
8 I don't know.

9 Q. Was there any policy, based on any fact
10 you've become aware of, that required him to be
11 evaluated by an EMS person or a doctor at that point?

12 A. Not that I'm aware of.

13 Q. Okay. Did anyone summon medical care
14 specifically for him?

15 A. I know they summoned, the EMS was out there,
16 but I'm not sure who or why.

17 Q. You're not aware they were summoned for
18 Spurgeon?

19 A. No.

20 Q. Okay. You're not aware of the call went in
21 to check on Spurgeon and his leg?

22 A. No.

23 Q. Do you know who checked on Mr. McBrayer in
24 the car?

25 A. No, sir.

1 Q. Okay. I've deposed Deputy Hancock.

2 A. Right.

3 Q. And he acknowledged that he and Henderson
4 were the last ones there and had the least
5 information.

6 A. Correct.

7 Q. That he was the youngest one there, that he
8 had the least training, and he had no real medical
9 training?

10 A. Correct.

11 Q. Do you agree he was probably the least
12 qualified person to check on a McBrayer's health and
13 how he was doing in the car?

14 MR. WILLIAMS: Object to form.

15 A. I don't know. I don't know. I don't know
16 the training of the rest of the officers.

17 Q. Okay. Do you know why he was chosen?

18 A. No.

19 Q. Do you know who chose him?

20 A. No, sir.

21 Q. Okay. It is the policy of your department
22 that any officer who may have been involved in
23 wrongdoing should not be involved in his own evidence
24 gathering or investigation?

25 A. Correct.

1 Q. All right. Do you agree that because Deputy
2 Tripp and Deputy Spurgeon may have been involved in
3 the use of excessive force, that they should not have
4 been involved in any investigation or evidence
5 gathering at the scene?

6 A. Correct.

7 Q. Should have been, I forget who all was
8 there, Henderson, Calderone, Hancock, or there was one
9 other guy. It should have been one of them, right?

10 A. Correct.

11 Q. Okay. For instance, if somebody went out
12 and looked for the taser parts it shouldn't have been
13 Tripp and Spurgeon, right?

14 MR. WILLIAMS: Object to form.

15 A. I'm not saying they shouldn't have then
16 looked for it, but they shouldn't have tampered with
17 it, once they found it.

18 Q. I understand.

19 A. If they found it.

20 Q. Okay. Sheriff, I appreciate your time.

21 A. You're welcome. Anytime.

22

23 EXAMINATION

24 BY MS. NGUYEN:

25 Q. Good morning, Sheriff.

1 A. Good morning.

2 Q. I met you just briefly before the
3 deposition. My name is Amy Nguyen and I represent
4 Axon Enterprises which is formerly TASER
5 International.

6 A. Right.

7 Q. Just a few areas of follow up. First, I
8 know you haven't gone through the taser certification
9 program, correct?

10 A. Correct.

11 Q. Have you ever seen then the Taser training
12 materials that they put out that agencies can use in a
13 PowerPoint form?

14 A. No.

15 Q. Have you ever seen Axon's warnings about the
16 use of the taser device?

17 A. I think I saw one sheet where they had a
18 disclaimer that, of what, of possibilities but what
19 the taser may cause but other than that, no.

20 Q. Okay. I'm just going to show you what has
21 been previously marked as Defense Exhibit 9.

22 (Whereupon, Defense Exhibit 9, having previously
23 been marked for identification, was exhibited to the
24 witness.)

25 Thank you.

1 MR. SPURLIN: You don't have anymore?

2 MS. NYUGEN: I brought it when I first
3 introduced it.

4 MR. SPURLIN: I understand. You don't have
5 any more today?

6 MS. NYUGEN: No.

7 Q. (By Ms. Nguyen) So this, in front of you,
8 this is a, you see that it's an eight page document.
9 This one's front and back but a total of eight pages.

10 A. Which page?

11 Q. What's that?

12 MR. SPURLIN: Which page?

13 Q. I was just asking you if you see it, this
14 document, it's front and back.

15 A. Oh, oh. Yeah, yeah.

16 MR. WILLIAMS: The total number of pages.

17 MS. NYUGEN: A total of eight pages.

18 MR. WILLIAMS: I think the back page will
19 show, it is correct.

20 A. Eight.

21 Q. Eight pages.

22 A. Yeah.

23 Q. Okay. Do you recall ever seeing this, this
24 full eight-page document?
25

1 A. No.

2 Q. Thank you. And so, because you haven't seen
3 this eight-page document, entitled TASER Handheld CEW
4 Warnings, instructions and Information to Law
5 Enforcement, are you able to testify to the contents
6 of this document?

7 A. No ma'am.

8 Q. Do warnings --

9 MR. SPURLIN: Let me stop you one second.
10 Did you give a copy to the court reporter?

11 MS. NYUGEN: No. This has already been
12 previously introduced in a prior deposition.

13 MR. SPURLIN: I understand, but you're using
14 it in his deposition, and I want to use it in his
15 deposition, so I think the court reporter's going to
16 need a copy of it.

17 MS. NYUGEN: Well. If you want a copy, you
18 can use the copy that I just showed the witness.

19 MR. SPURLIN: Yep. That is what I was
20 saying.

21 MS. NYUGEN: Yeah. It's the same. Okay.

22 MR. WILLIAMS: We don't want to have
23 different exhibits.

24 MS. NYUGEN: Right.

25 MR. WILLIAMS: Because it gets confusing.

1 MR. SPURLIN: It's the same number.

2 MR. WILLIAMS: As long as it states, she
3 doesn't, yeah,

4 MS. NYUGEN: I use --

5 MR. WILLIAMS: its already been introduced.

6 MS. NYUGEN: -- sequential exhibits. Right.

7 THE COURT REPORTER: And I'll attach it to
8 this transcript.

9 MR. SPURLIN: Right. I just want it
10 attached to this transcript. So, that when I read
11 this transcript, it'll be there.

12 THE COURT REPORTER: Right. And then same
13 thing for those Mr. Spurlin used.

14 MR. WILLIAMS: Those are new exhibits.

15 MS. NYUGEN: Those are new.

16 MR. WILLIAMS: That's been previously
17 identified.

18 THE COURT REPORTER: But even this being an
19 old one, I will still put it on the transcript, is
20 that okay?

21 MS. NYUGEN: Yeah, that's fine.

22 MR. WILLIAMS: That's fine.

23 MS. NYUGEN: That's fine.

24 MR. SPURLIN: And that is, of course, why I
25 used 41 and 42.

1 Q. (By Ms. Nguyen) Okay. Sheriff, do warnings
2 from a manufacturer equal, equate to your department's
3 policy?

4 A. No.

5 Q. And is there anything requiring you as a
6 Sheriff's Department to follow a manufacturer's
7 warnings?

8 A. No.

9 Q. And that includes Axon's warnings.

10 A. Correct.

11 Q. With regard to the training, is there
12 anything requiring you as a department, requiring you
13 to use the training materials that Axon puts out?

14 A. Not to my knowledge but I mean, we would use
15 whatever product training depending on whatever
16 company we used.

17 Q. Right?

18 A. But --

19 Q. Let me, it was a poor question. In this
20 case, Axon has put some training materials together.

21 A. Correct.

22 Q. You understand that?

23 A. Correct.

24 Q. And as a Sheriff's Department, you can
25 either choose to use those training materials or say,

1 no, we aren't going to use them, we're going to use
2 something else. Right?

3 A. Correct.

4 MR. SPURLIN: Object to the form.

5 Q. (By Ms. Nguyen) And in this instance, you
6 previously testified with Mr. Spurlin that your
7 department has chosen to use those training materials.
8 Is that right?

9 A. That's correct.

10 Q. But those, do those training materials equal
11 your policy on when to use taser devices?

12 A. Correct.

13 Q. Do you, do you as a department, create your
14 own policy with regard to the use of taser energy
15 weapons?

16 A. Correct.

17 Q. Okay. So, that was my question. You don't
18 take the taser training materials and say, I'm just
19 going to adopt this, and this is going to be our
20 policy. Do you?

21 A. No, it's not absolute.

22 MR. SPURLIN: Object to the form.

23 Q. And do you know, I know you haven't been
24 through the training, so I'm just asking if you know.
25 Do you know if the training materials that TASER puts

1 out, if they focus on simply how to use the devices or
2 do they also tell you when to use the devices?

3 A. I think, to some point it's all inclusive.

4 Q. Okay. Do you understand as you sit here
5 today that your policy on, for your deputies to follow
6 on when to use the taser devices, that has to be
7 consistent with the law?

8 A. Correct.

9 Q. You would agree with that?

10 A. Correct.

11 Q. And is that what you actually follow in
12 developing your policy, is the law.

13 MR. SPURLIN: Object to the form.

14 A. Sure.

15 Q. And not just the TASER policy --

16 A. Yeah.

17 Q. But I'm talking about any policy.

18 A. Any policy has to coincide with the law.

19 Q. Right. And so, my question to you is, is
20 you as a Sheriff's Department, did you take TASER's
21 training materials on how to use the device and just
22 say that's going to be our policy?

23 A. Not, to a certain degree, but totally
24 inclusive.

25 Q. Did you use it as some guidance in

1 developing that policy?

2 A. Sure.

3 MR. SPURLIN: Object to the form.

4 Q. But that's not something that you would
5 equate training materials into that equals our policy?

6 A. No, we don't, we don't take the training
7 from anybody and create policy, as word for word.

8 Q. Right. Just like with firearms, right.
9 Firearms have warnings.

10 A. Correct.

11 Q. Do you take firearm warnings and say that's
12 going to be our policy?

13 MR. SPURLIN: Object to the form.

14 A. Not inclusive.

15 Q. Right. But it's something that you can
16 consider in developing your policy, right?

17 MR. SPURLIN: Object to the form.

18 A. Right.

19 Q. And when it comes to the use of the TASER
20 device, per your department policy, do you know of any
21 absolute prohibition saying you cannot deploy a taser
22 device more than three times?

23 A. No.

24 Q. Do you know of an absolute prohibition that
25 says you never can deploy a probe in the chest area?

1 A. I'm not aware of one.

2 Q. Mr. Spurlin asked you some questions about
3 prior testimony of Deputy Spurgeon. Right? Those
4 are, I think they are probably still in front of you.
5 Plaintiff's Exhibit 41 is Deputy Spurgeon. Can you
6 see that?

7 A. Yeah.

8 Q. And then Plaintiff's Exhibit 42 was Deputy
9 Tripp.

10 A. Correct.

11 Q. Now, you notice at the top of those
12 transcripts, that was from the State Court case,
13 right?

14 A. Right.

15 MR. SPURLIN: Object to the form.

16 Q. And so, you aren't aware of any testimony,
17 let me know, are you aware of any testimony that
18 Deputy Spurgeon and Deputy Tripp gave in this case in
19 the federal matter?

20 A. No.

21 Q. And when Mr. Spurlin was asking you
22 questions about this testimony, he didn't let you
23 know, what they testified to in this matter in the
24 federal case, did he?

25 MR. SPURLIN: Object to the form. Sworn

1 testimony is sworn testimony.

2 MS. NGUYEN: Is that --

3 MR. WILLIAMS: Speaking objection?

4 MS. NYUGEN: Is your answer, no?

5 MR. SPURLIN: Sure, it's a speaking
6 objection. I'm going to make another one too.

7 MR. WILLIAMS: I thought you were opposed to
8 this.

9 MR. SPURLIN: Sworn testimony is admissible
10 in any case regardless of when it's taken, and
11 everyone knows what the federal rules say about that.

12 MR. WILLIAMS: That's correct.

13 Q. (By Ms. Nguyen) Sheriff, I'm sorry, your
14 answer to that question is no?

15 A. I'm not aware. No.

16 Q. Okay. That's all the questions I have,
17 Sheriff. Thank you.

18 EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Sheriff Scarbrough, I want you to take a
21 look at the, I don't know if this was previously
22 admitted. Tift County Sheriff's Office conducted
23 energy weapons written policy.

24 MR. WILLIAMS: I don't have a marked copy.
25 I've got Defendant's Bates stamps seven through -

1 MR. SPURLIN: I'll tell you which end, you
2 can do which is fine with me. You can use that one.
3 You can email her an unmarked one if you would like
4 and she can substitute it later? Because I'm not
5 trying to be difficult to anybody. You got one?

6 MS. NYUGEN: It's Defense Exhibit 4.

7 MR. WILLIAMS: Okay. Defense Exhibit 4, can
8 I just use this?

9 MS. NYUGEN: Yeah, that's an extra.

10 Q. (By Mr. Williams) Let me hand you this
11 since we already marked and she can make it an
12 exhibit.

13 Do you recognize that exhibit as a copy of policy
14 from the Tift County Sheriff's Office on conducted
15 energy weapons?

16 (Whereupon, Defense Exhibit 4, having previously
17 been marked for identification, was exhibited to the
18 witness.)

19 A. Correct.

20 Q. And it's previously been testified that this
21 was a policy in place at the time of this incident is
22 that your understanding, do you know?

23 MR. SPURLIN: Object to the form, leading.

24 A. Yes, sir.

25 Q. Okay. Take a look at that and tell me if

1 you see any limitation on the number of times that a
2 taser can be used?

3 A. No.

4 Q. So, you don't see any. Okay. So, you're
5 not aware of any policy provision in the Tift County
6 Sheriff's Office that would prevent it, prohibit
7 discharges of a five second burst of a taser for more
8 than three times?

9 MR. SPURLIN: Object to the form, leading.

10 A. No, sir.

11 Q. And as to aiming at the chest area, do you
12 see anything in the policy, written policy that
13 prohibits a deputy from aiming a taser at the chest
14 area?

15 A. Not the chest area, no sir.

16 Q. Let me direct your attention to item number
17 12. Does that provide that the chest area is a
18 secondary target for the use of the taser?

19 MR. SPURLIN: Object to the form, leading.

20 A. The chest area creates center mass, so yes
21 sir.

22 Q. So, in fact, let's just read. Read the,
23 read number 12 into the record. What does that, what
24 does that say?

25 A. In preparation of firing when reasonable,

1 the TASER M26/X26 shall be pointed in a safe
2 direction, taken off safe and then aimed. Center mass
3 of the subject's back in the primary aiming point and
4 center mass of the chest or legs are secondary
5 targets.

6 Q. So, if it's a secondary target, is that
7 permissible to aim at?

8 MR. SPURLIN: Object to the form.

9 A. Correct.

10 Q. You previously testified you haven't been
11 through the training?

12 A. No, sir.

13 Q. You don't do the training?

14 A. No, sir.

15 Q. You, do you defer to your training officers
16 as to the implementation of the Tift County Sheriff's
17 Office policy in connection with the taser training
18 materials?
19

20 A. Yes.

21 Q. Do you recall Major Torres mentioning to
22 you, after this incident, that he had reviewed the
23 video regarding the use of the taser by Deputy Tripp
24 and Spurgeon.

25 A. Yes, sir.

1 Q. Do you believe that Major Torres did an
2 evaluation of that in regard to whether he believed
3 the tasers were used appropriately?

4 MR. SPURLIN: Object to the form.

5 A. That was his belief as he related it to me.

6 Q. Okay. All right. No further questions.

7 Thank you.

8 FURTHER CROSS EXAMINATION

9 BY MR. SPURLIN:

10 Q. Sheriff, I can't let you go without keeping
11 you a little longer.

12 A. Yeah.

13 Q. I want you to look at Exhibit number 9 with
14 me.

15 A. Number 9?

16 Q. It's the TASER one.

17 A. Oh, the TASER? Okay.

18 Q. Yes, sir. You were asked some questions
19 about this? You were aware whether you knew this
20 particular document was used or not, that your
21 delegates, Captain Whitley and Major Torres, used
22 TASER or Axon information in training, right?

23 A. Sure. Yes.

24 Q. And number two, on this form it says read
25 and obey the warnings and materials provided by Axon,

1 correct?

2 A. Correct.

3 Q. And it says read, understand and follow all
4 current instructions, warnings and relevant TASER
5 training materials, correct?

6 A. Correct.

7 Q. It doesn't tell the officers who are being
8 certified they can use discretion to disregard the
9 instructions, warnings and TASER training materials,
10 does it?

11 A. No.

12 Q. Tells them to read, understand, follow and
13 obey, right?

14 A. Correct.

15 Q. And it says, failure to do so increases the
16 risk of death or serious injury, correct?

17 A. Correct.

18 Q. Okay. And then in the middle of the page in
19 this block right here where a big warning --

20 A. Correct.

21 Q. -- sign is, it says, if not avoided, could
22 result in death or serious injury, correct?

23 A. Correct.

24 Q. And then the next warning at the bottom of
25 the page says CEW exposure causes certain effects,

1 including physiologic and metabolic changes, stress
2 and pain, correct?

3 A. Correct.

4 Q. So, even if the person is not completely
5 incapacitated, this tells the person using the TASER
6 weapon that exposure will have physiologic and
7 metabolic changes, stresses and pain on the person,
8 correct?

9 MS. NYUGEN: Object to form, misstates
10 document.

11 A. Possibly.

12 Q. And it says those effects are cumulative,
13 right? So, if you shoot them more than one time, they
14 add on to one another, correct?

15 MR. WILLIAMS: Object to form.

16 MS. NYUGEN: Same objection.

17 A. Correct.

18 Q. Isn't that what cumulative means?

19 A. Correct.

20 Q. Okay. And then it says, in the last
21 sentence, repeated, prolonged or continuous CEW
22 applications may contribute to cumulative exhaustion,
23 stress, cardiac, physiologic, metabolic, respiratory
24 and associated medical risk, correct?

25 A. Correct.

1 Q. Now, let me stop right there. You were
2 asked some questions by Mr. Williams about your
3 written policy, correct?

4 A. Correct.

5 Q. When we began this deposition, I asked you
6 were there other things passed down through the chain
7 of command that were not in writing? You said, yes,
8 correct?

9 A. Correct.

10 Q. And I asked you did you expect those to be
11 followed the same as written policies? You said yes,
12 correct?

13 A. Correct.

14 Q. Verbal commands are expected to be followed,
15 correct?

16 A. Correct.

17 Q. Training from your delegates, Wingate,
18 Whitley and Captain I mean, Major Torres, are expected
19 to be followed, correct?

20 A. Correct.

21 Q. Whether they're in written policy or not,
22 correct?

23 A. Correct.

24 Q. Okay. And you expected the people getting
25 this TASER certification to follow these warnings,

1 correct?

2 A. Correct.

3 Q. Okay. Now, look at page two with me. I'm
4 not going to read it all. But if you'll look at the
5 second paragraph. It talks about people who are
6 particularly susceptible, and I'm highlighting. It
7 said including elderly, those with heart conditions,
8 those with asthma, those with pulmonary conditions,
9 those suffering from excited delirium, profound
10 agitation, severe exhaustion, drug intoxication,
11 chronic drug abuse or over exertions from a physical
12 struggle. Is that a warning that you expected your
13 deputies to follow?

14 MS. NYUGEN: Object to form.

15 A. Where is that at now?

16 Q. Yes, sir. It's this paragraph right here.
17 The second one.

18 A. Some individuals --

19 Q. You can read it to yourself.

20 A. Wait a minute.

21 Q. Let me see. It's on the back probably.

22 A. Oh, it's on the back, back here.

23 Q. Your copy's front and back, Sheriff.

24 A. Okay.

25 MR. WILLIAMS: Yeah, yeah, it's right there.

1 A. Okay. From here, some individuals. Right.

2 Q. Read it to yourself. When you look up, I'll
3 ask my question again.

4 A. Okay.

5 Q. The training materials did tell anyone who
6 read this and took the course that there are some
7 individuals who are more susceptible to injury or
8 death from the taser weapon, correct?

9 MR. WILLIAMS: Object to form.

10 MS. NYUGEN: Join.

11 A. Correct.

12 Q. And you expected your deputies to follow
13 that training in deciding when to use the taser
14 weapons, correct?

15 MS. NYUGEN: Object to form.

16 A. Depending on the circumstances.

17 Q. All right. But did Major Torres or Captain
18 Whitley ever tell any of the deputies what particular
19 circumstances they could use their discretion in to
20 use the taser weapon on any of those populations?

21 A. I'm not aware.

22 Q. Okay. And you're not aware of any specific
23 training any deputy in the Tift County Sheriff's
24 Department ever received on a specific hypothetical
25 fact situation when they could violate those warnings?

1 MR. WILLIAMS: Object to form.

2 MS. NYUGEN: Object to form.

3 A. I'm not aware of it.

4 Q. And the warning at the bottom that's in the
5 box warns that exposure in the chest area has a
6 probability of inducing extra heartbeats, correct?

7 A. Correct.

8 Q. And it says cardiac capture can lead to
9 cardiac arrest, correct?

10 A. Correct.

11 Q. And then at the top of the next page. It
12 has a drawing, and I know this was not in color, out
13 here with the lighter colors of the chest and the head
14 area being areas to try to avoid and it tells you to
15 try to avoid that in the writing. Does it not?

16 A. Correct.

17 Q. Okay. And it says, I'm reading number two,
18 when practicable avoid intentionally targeting certain
19 areas, which include the chest area, correct?

20 A. Correct.

21 Q. Okay. Acknowledging that you should not
22 intentionally shoot and aim at the chest, right?

23 MR. WILLIAMS: Object to form.

24 MS. NYUGEN: Join.

25 A. Correct.

1 Q. Okay. Did you ever instruct, or you ever
2 had any discussion with Torres or Whitley to tell the
3 deputies they're training to ignore that and that they
4 can use the chest area as an area to intentionally
5 target?

6 A. No, sir.

7 Q. Did you develop a policy that the training
8 materials and the trainees could ignore that and
9 intentionally target the chest?

10 A. No.

11 Q. Okay. There was a question asked of you
12 about Tripp's testimony. You remember being asked if
13 you read his sworn testimony, I gave you and if I
14 asked you a question about his sworn testimony in the
15 new case?

16 A. Correct.

17 Q. Is there any difference in sworn testimony
18 on Monday and sworn testimony on Tuesday?

19 A. No.

20 Q. It's supposed to be under oath and the
21 truth, right?

22 A. Correct.

23 Q. If Tripp told the truth the first time he
24 was deposed, closer in time to this, then he
25 intentionally targeted the chest in violation of those

1 training materials, correct?

2 MS. NYUGEN: Object to form.

3 MR. WILLIAMS: Object to form.

4 A. I guess, if he was telling the truth.

5 Q. Okay. You don't have a reason to believe he
6 would have lied about that, do you?

7 MS. NYUGEN: Object to form.

8 A. No.

9 Q. That would have been against his interests.

10 A. Correct.

11 Q. Thank you.

12

13 (Whereupon, at 11.26 p.m. the deposition was
14 concluded, and Plaintiff's Exhibits 41 and 42 and
15 Defense Exhibits 4 and 9 were tendered to the reporter
16 for attachment hereto. The witness chose to read and
17 sign his deposition.)

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E R R A T A P A G E

IN RE: GENE SCARBROUGH

I, GENE SCARBROUGH, the witness herein, have read the transcript of my testimony and the same is true and correct, to the best of my knowledge, with the exception of the following changes noted below, if any: (Please use additional sheets if needed)

Page #	Line #	Correction Made	Reason for Correction
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Under penalties of perjury, I declare that I have read my foregoing transcript and, together with any changes made above, the facts stated herein are true.

Date: _____
GENE SCARBROUGH, DEPONENT

Date: _____
WITNESS

Sworn to and subscribed before me,
this ____ day of _____, 2022.

NOTARY PUBLIC
My Commission Expires:

Return to: Advanced Court Reporting, 193 Brooksville Rd., Dawson, GA
39842 or email kmasoncr@gmail.com

D I S C L O S U R E

STATE OF GEORGIA)

COUNTY OF TERRELL)

Pursuant to Article 10 (b) of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia. I make the following disclosure:

I am a Georgia Certified Court Reporter and appeared as a sole practitioner. I was contacted by the offices of Spurlin & Spurlin to provide court reporting services for the deposition. The deposition was not taken under any contract prohibited by O.C.G.A. 9-11-28(c), and my usual and customary rates will be charged to all parties in the case. A financial disclosure will be provided to any party that requests same.

Witness my hand this the 28th day of February, 2022.

Katy Mason

KATY MASON, CCR
#5632-8584-9957-9904

C E R T I F I C A T E

STATE OF GEORGIA)

COUNTY OF TERRELL)

I, Katy Mason, Certified Court Reporter, before whom the foregoing was taken, hereby certify that GENE SCARBROUGH was duly sworn by me; that the testimony of said deponent was taken down by me, and was later reduced to written form by me; that the foregoing pages are a true and correct record of the testimony given by said deponent to the best of my ability; that I am neither counsel for or related to the parties to the action in which this deposition was taken, nor any attorney or counsel employed by the parties hereto; nor am I financially interested in the outcome of this action.

Witness my hand this 28TH day of February, 2022.

Katy Mason

KATY MASON, CCR
#5632-8584-9957-9904

E R R A T A P A G E

IN RE: GENE SCARBROUGH

I, GENE SCARBROUGH, the witness herein, have read the transcript of my testimony and the same is true and correct, to the best of my knowledge, with the exception of the following changes noted below, if any: (Please use additional sheets if needed)

Page #	Line #	Correction Made	Reason for Correction
66-71		It is not a violation of the Tift County Sheriff's Office Policies and Procedures on training for a deputy to intentionally aim a taser weapon at a person's chest. In fact, the written policy that deputies are trained on and expected to follow allows the chest area to be a secondary target area.	I was mistaken and my testimony was not correct. As I stated earlier in my testimony I have never received training on the taser and and know very little about how and when to use one. I delegate the authority to officers who are certified taser users and trainers to establish the policies and procedures and provide training to the deputies within the department.

Under penalties of perjury, I declare that I have read my foregoing transcript and, together with any changes made above, the facts stated herein are true.

Date: 03/07/2022 Gene Scarbrough
GENE SCARBROUGH, DEPONENT

Date: 03/07/2022 Bob B. Heard
WITNESS

Sworn to and subscribed before me,
this 7 day of March, 2022.

Rita A. McGahee
NOTARY PUBLIC

My Commission Expires: Dec. 28, 2024

